

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE: DA VINCI SURGICAL ROBOT) Lead Case No.:
ANTITRUST LITIGATION) 3:21-cv-03825-VC

THIS DOCUMENT RELATES TO:
ALL ACTIONS

SURGICAL INSTRUMENT SERVICE) Case No.
COMPANY, INC.,) 3:21-CV-03496-VC

Plaintiff,

vs.

INTUITIVE SURGICAL, INC.,

Defendant.

VIRTUAL VIDEOCONFERENCE VIDEO-RECORDED
DEPOSITION OF KEVIN MAY

Thursday, November 3, 2022
Remotely Testifying from Yorba Linda, California

Stenographically Reported By:
Hanna Kim, CLR, CSR No. 13083
Job No. 5541214

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Plaintiff,

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INTUITIVE SURGICAL, INC.,

Defendant.

Virtual videoconference video-recorded
deposition of KEVIN MAY remotely testifying from
Yorba Linda, California, on Thursday, November 3,
2022, beginning at 7:34 a.m., PDT, and concluding at
12:35 p.m., pursuant to the stipulations of counsel
thereof, before Hanna Kim, CLR, Certified Shorthand
Reporter, No. 13083.

REMOTE VIDEOCONFERENCE APPEARANCES OF COUNSEL:

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Inc:

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For Hospital Plaintiffs:

HAUSFELD LLC

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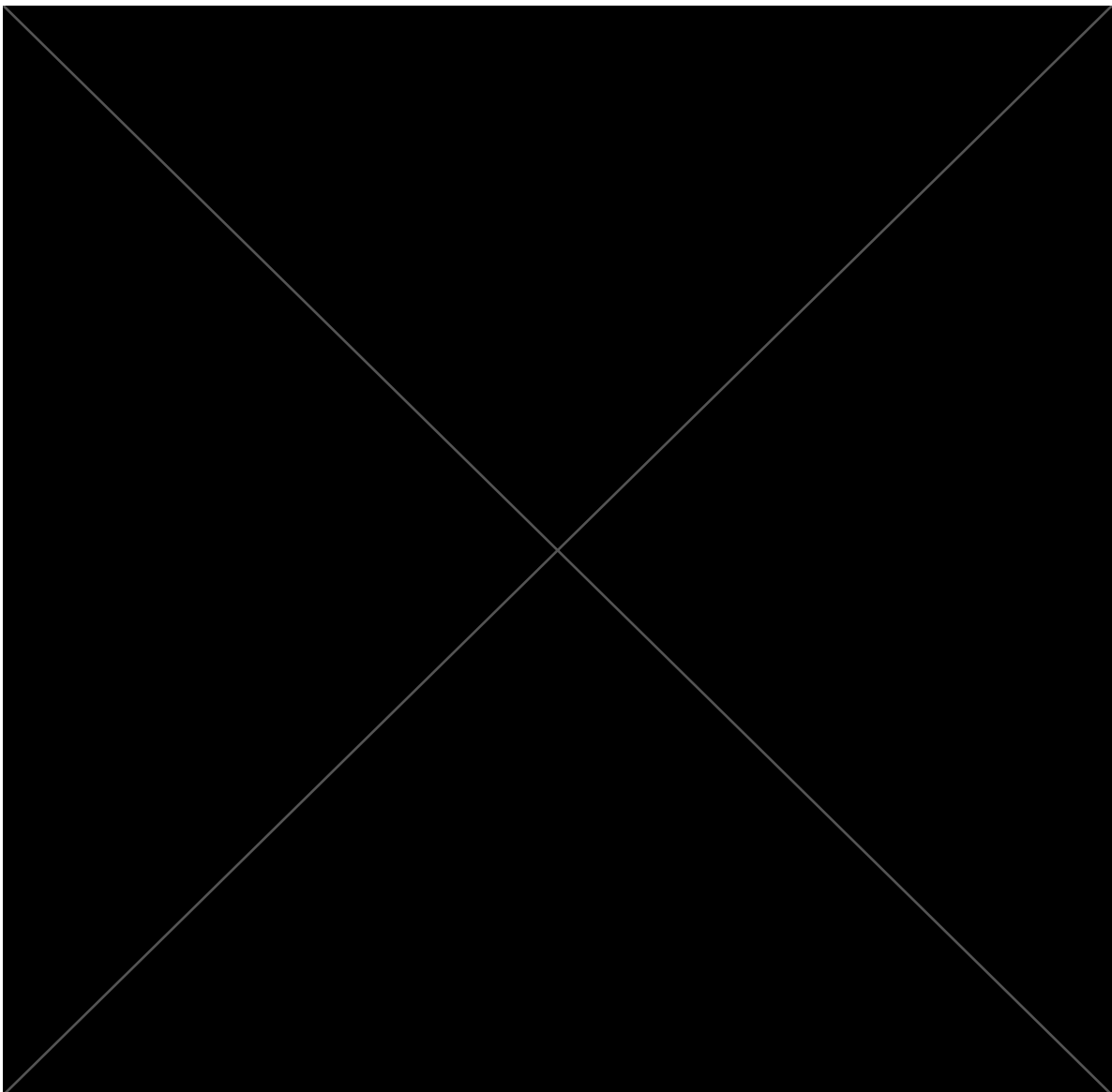
1 Does Restore Robotics Repairs have in mind
2 a start date for its work on changing the usage
3 limitations of EndoWrists for Xis without FDA
4 clearance?

5 A. Can you restate -- re- -- re-ask that 09:12:41
6 question. Sorry.

7 Q. Yes. That's all right.

8 When -- strike that.

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1 into it, and they said that it was risky for them
2 because they were really concerned that Intuitive
3 was going to cut off their business, and they didn't
4 want to be involved with that. That was a phone
5 call.

10:09:43

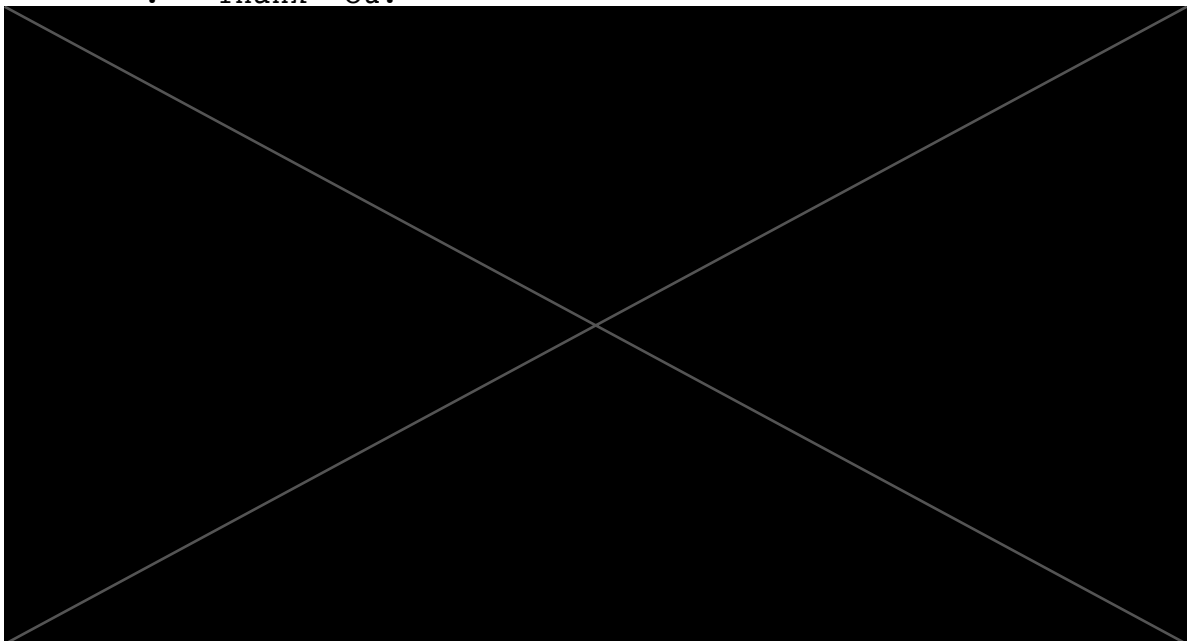
6 And then there was a company, this was
7 through our rep, Scott. He talked to Pacific,
8 and -- and Pacific said that Intuitive said that
9 they could not use our services. So those are some
10 examples that I had some fairly direct contacts
11 with. So there were several instances.

10:10:02

12 Then there was also a cease and desist
13 letter that we received from Intuitive Surgical.
14 And then I had heard that there were other cease and
15 desist letters to Rebotix and to other customers.

10:10:18

16 . Thank ou.



1

2 BY MR. MAIDA:

3 Q. I'd like to talk to you a bit about
4 Restore's EndoWrist business. Can you please
5 describe the type of Xi EndoWrist that Restore has 10:11:14
6 been able to repair?

7 A. Yes. There is -- there is a list that we
8 had from Rebotix that we've been trained on, how to
9 repair the instruments. And there was 38 Si
10 instruments that we were able to repair. 10:11:33

11 Q. Is there a common theme linking the
12 EndoWrists that Restore has been able to repair?

13 MR. LAZEROW: Objection. Vague.

14 THE WITNESS: Yes. Multiuse instruments.
15 So instruments that are able to be used at least ten 10:11:49
16 times. And I think there was a couple of them -- a
17 couple instruments that had higher usages. I
18 believe they were clip applicators. We were able to --
19 to repair all of those.

20 BY MR. MAIDA: 10:12:17

21 Q. You -- you went into my next question a
22 bit. But I'd like to know, can all or only a subset
23 of EndoWrist models be repaired?

24 A. Only a subset. So all of the Si
25 instruments, all -- all of the 8 millimeters, except 10:12:31

1 A. Yes, we have.

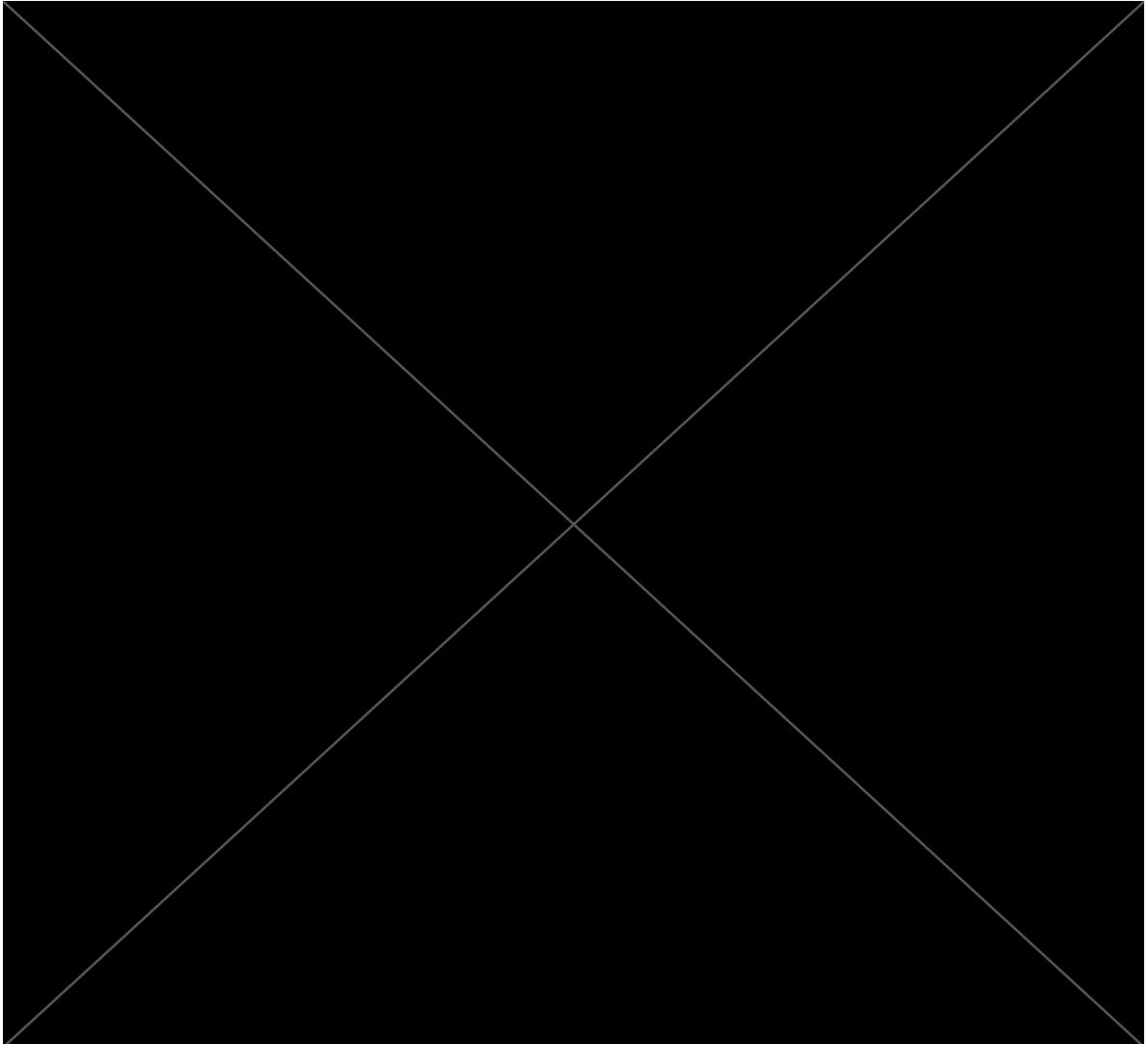
2 Q. How many?

3 A. It was over a hundred. I -- I don't know
4 the exact -- I don't remember the exact number.

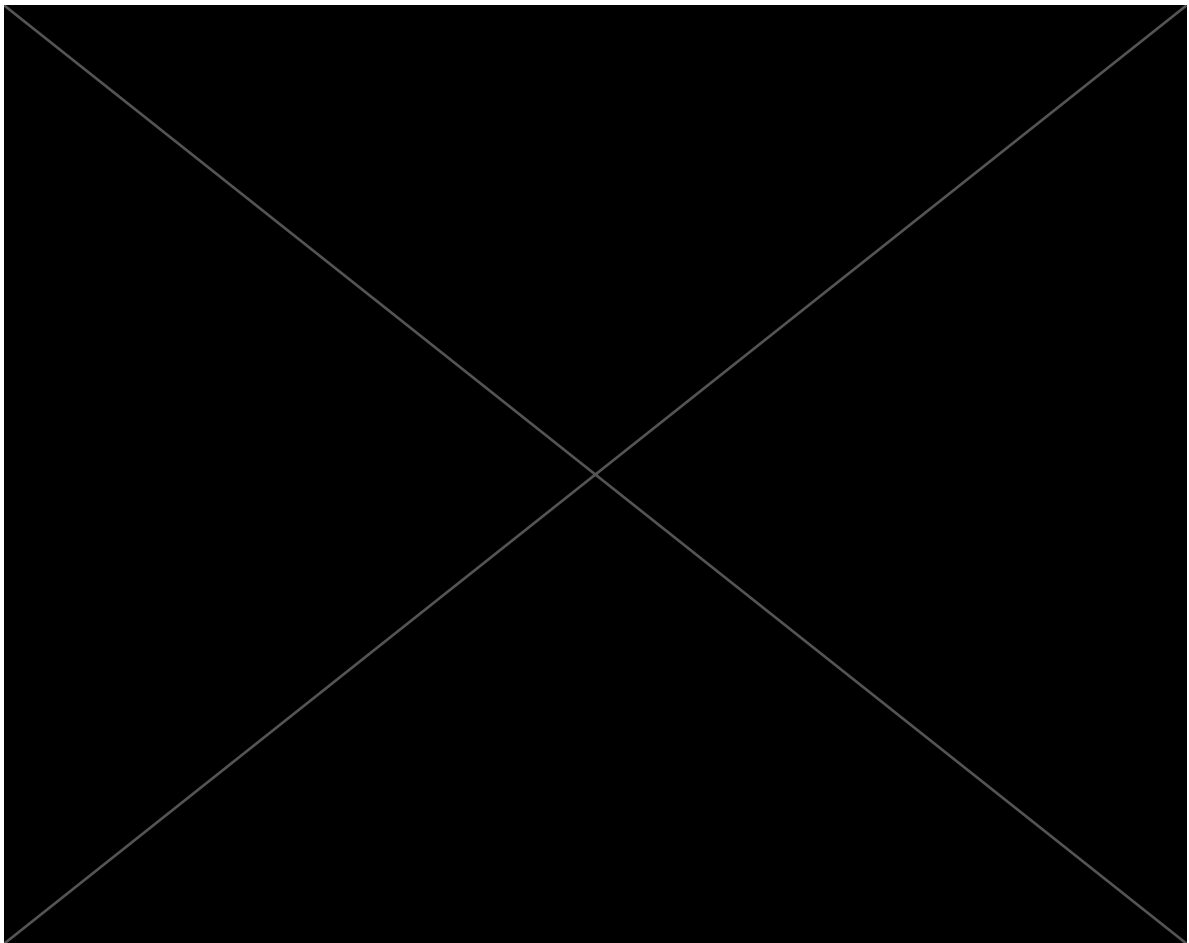
5 Q. Just to make sure I understand this 10:30:40
6 correctly, you testified earlier that Restore has
7 begun developing the technology to bypass the X and
8 Xi chip?

9 A. That's correct.

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15 BY MR. MAIDA: 10:33:06

16 Q. You mentioned earlier that Restore
17 developed the Xi reader.

18 Am I remembering that correctly?

19 A. That is correct.

20 Q. What is the Xi reader? 10:33:17

21 A. So the Xi reader is a -- is a device that
22 allows you to communicate with the instrument
23 without using -- without having the robot. So
24 essentially, you can attach the Xi instrument to
25 this handheld reader, and then it will communicate 10:33:40

1 caveats and whatnot because, you know, you're
2 engaging them to do something and they -- they
3 want to -- they don't want to be held legally
4 responsible in case something doesn't happen.

5 And so, Number one, that was 10:42:37
6 boilerplate-type stuff.

7 The second thing was is that was very
8 early on in the project. And we had since passed a
9 lot of these hurdles that they were concerned about.

10 Q. Okay. So is it fair to say that the 10:42:53
11 concerns were -- are alleviated now?

12 A. Yes.

13 Q. What does finding the Crypto Companion
14 chip mean for Restore's business as it relates to
15 the X and Xi EndoWrists? 10:43:09

16 MR. LAZEROW: Objection.

17 THE WITNESS: It's just a -- a significant
18 jump forward to be able to identify it and to be
19 able to find that the -- the chip manufacturer. All
20 those things were very positive. 10:43:26

21 So it -- it -- it kind of shifts the --
22 kind of shifts the -- the -- the can we do this
23 project to yes, we can do the project, but now it's
24 just a matter of engineering, engineering, including
25 time and money and effort. 10:43:43

1 So it went from a nebulous idea of can we
2 do this or can't we do this to yeah, we can do this.
3 It's just a matter of engineering.

4 BY MR. MAIDA:

5 Q. How confident can you -- are you that 10:43:56
6 Restore will be able to develop the technology to
7 repair X- and Xi-compatible EndoWrists?

8 A. Extremely high.

9 Q. How, if at all, were Restore's ability to
10 bypass the S and Si chip affect its ability to 10:44:16
11 bypass the X and Xi chip?

12 A. Can you restate that?

13 Q. Sure. I'll rephrase.

14 Do you consider Restore's ability to
15 bypass the S and Si chip to be the recipe to use in 10:44:30
16 developing the technology to bypass the X and Xi
17 chip?

18 A. There are similarities between what we
19 were doing with the S and the Si chip, and we
20 learned a lot from that. So it was very helpful to 10:44:47
21 be able to reverse engineer the chip for the X and
22 the Xi, but they -- they are -- they are -- have --
23 they do have some differences.

24 Q. I believe you testified to that a bit
25 earlier, but I just wanted to make sure. Is Restore 10:45:11

1 witness' needs and the court reporter, as well.

2 THE COURT REPORTER: May we go off the
3 record real quick?

4 MR. BERHOLD: And, yeah. Oh, go ahead.

5 THE COURT REPORTER: I'm sorry. May we go 11:00:00
6 off the record real quick?

7 MR. BERHOLD: Yeah.

8 THE VIDEOGRAPHER: We are off the record
9 at 10:59 a.m.

10 (Lunch recess taken.) 11:01:18

11 THE VIDEOGRAPHER: We are back on the
12 record at 11:31 a.m.

13 EXAMINATION

14 BY MR. McCAULLEY:

15 Q. Mr. May, good afternoon. My name's Rick 11:31:34
16 McCaulley, and I represent one of the Plaintiffs in
17 the case in San Francisco, SIS.

18 Are you familiar with the company SIS?

19 A. Yes, I am.

20 Q. And how are you familiar with them? 11:31:49

21 A. So in my company, Meta Vision, we have
22 been doing flexible scope repairs for them.

23 And then for Restore Robotics, we have
24 been doing the recovery program for them for the Xi
25 and Si instruments. 11:32:10

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1 Q. Do you have an understanding of SIS's
2 reputation in the medical device repair market?

3 A. Yes. They're -- I mean, they're a very
4 good company. They have a good standing. They have
5 an extensive distributorship availability. They 11:32:26
6 have -- they have contacts throughout the whole
7 United States. They -- they have a pretty far reach
8 and they have a lot of direct reps.

9 Q. I think you testified in response to a
10 question from Mr. Maida that the demand for repaired 11:32:41
11 Si instruments would be huge.

12 Do you remember that?

13 A. Yes.

14 Q. And you have over 20 years of experience
15 in that market, the repair market for medical 11:33:00
16 devices generally; correct?

17 MR. LAZEROW: Objection.

18 THE WITNESS: I have more than 30 years.

19 BY MR. McCAULLEY:

20 Q. Do you -- do you have any experience in 11:33:09
21 servicing endoscopes?

22 A. Yes, I do.

23 Q. And over the time that you've been
24 involved in market and repairing endoscopes, do you
25 have an understanding of what the share is for 11:33:22

1 difficult procedure?

2 MR. LAZEROW: Objection.

3 THE WITNESS: 33 years.

4 BY MR. McCAULLEY:

5 Q. I'm sorry. 11:39:26

6 A. But no, it is -- it is the simplest device
7 we've ever serviced or repaired.

8 Q. Can you give me some examples of more
9 complicated devices that you service or repair?

10 A. Yes. Rigid and flexible endoscopes are 11:39:40
11 significantly more difficult. The -- the optical
12 properties and the optical alignment and the -- the
13 characteristics of a rigid endoscope are more
14 complex than this EndoWrist device.

15 And then the flexible scope business, as 11:40:00
16 you guys know at -- at SIS, is an extremely
17 complicated device. It has an integrated camera
18 system, integrated with a lumens and working
19 channels and fiberoptic illumination, and very
20 delicate and intricate articulation. 11:40:20

21 And then the lengths are considerable on
22 those. They're -- they're up to 6 to 7-foot long.
23 They have electronic components that carry a signal
24 back from the camera all the way from the distal tip
25 that's inside the patient, all the way back to a 11:40:41

1 monitor and a camera control unit that's at bedside
2 near the patient.

3 Flexible scopes are significantly more
4 complicated and integrated, and they have much more
5 involved articulation properties in them. 11:40:56

6 Q. And I believe you testified those are
7 repairs that SIS routinely makes?

8 A. Yes, they do.

9 Q. I'd like to talk a little bit about the
10 recycle program that you referred to. 11:41:07

11 Did I refer to that correctly?

12 A. Yes. Recycle recovery program is what
13 we're calling it.

14 Q. The recycle recovery program is something
15 that you've partnered, at least to a certain extent, 11:41:19
16 with SIS on; correct?

17 A. That's correct.

18 Q. Have -- are you aware of any efforts by
19 Intuitive to interfere with that?

20 A. I have not heard of anything. I have not 11:41:30
21 heard anything.

22 MR. McCAULLEY: Okay.

23 I don't have any further questions.

24 Thank you, Mr. May.

25 MR. LAZEROW: Are the plaintiffs done? 11:41:44